JEWS AND THE ENGLISH LAW.

WHEN in 1655 Menasseh Ben Israel presented his famous memorial to Cromwell praying that the Jews might be received in England and permitted to exercise their religion, the Lord Protector summoned an assembly to declare their opinions on the matter. Two judges, the Lord Chief Justice Glyn and the Lord Chief Baron Steel, were members of that assembly, and they delivered their joint opinion that "There was no law which forbids the Jews' return into England." The assembly was ultimately dissolved without coming to any definite decision respecting the memorial, but shortly afterwards Jews in ever-increasing numbers settled in this country, and as we know, for a long period laboured under many disabilities; it may be not uninteresting to show by the evidence of the statute book and the law reports—in truth the only authentic means of proof—that the opinion of the judges was well founded, even if taken in its broadest meaning, namely, that the law of England imposed no burden or disability upon Jews as such. In an age of intolerance no doubt Jews felt the effects of intolerance, but these effects were also felt by all who did not conform to the religion as by law established; and if some of these effects pressed more heavily upon Jews than upon others, this was in all cases a mere accident, though it in fact made it more difficult for Jews than others to obtain absolute equality before the law. The courts of law, though they have, as in duty bound, enforced the provisions of the statute book, have always shown great tolerance and impartiality towards the Jew, and have, so far as is consistent with

the faithful administration of the enactments ordained by Parliament, resisted the not infrequent attempts to make use of their machinery for the purpose of persecution; and there are even instances on record of the executive government having stepped in and prevented an abuse of the process of the Court when there were no other means of preventing injustice being done.

Let us first turn to the account the law reports have to give us of attacks made upon the exercise of the Jewish religion. In the appendix to Haggard's *Consistory Court Cases* we find that in the year 1673 certain Jews trading in and about the City of London were indicted of a riot at the Guildhall for meeting together for the exercise of their religion in Duke's Place, and the bill was found against them by the Grand Jury. A petition was thereupon presented to the King in Council at Whitehall by Abraham Delivera, Jacob Franco Mendez, Abraham de Porto, and Domingo Francia, on behalf of themselves and others, praying to be permitted to exercise their religion freely or to be given a convenient time to withdraw their persons and estates into parts beyond the seas; and on Feb. 11 it was ordered by the King in Council "that Mr. Attorney General do stop all proceedings at law against the Petitioners, who have been indicted as aforesaid and do provide they may receive no further trouble in this behalf[1]."

Yet in a few years' time they were destined to receive further trouble, for in 1685 one Thomas Beaumont caused several writs to be issued out of the King's Bench under the statute made in the twenty-third year of Queen Elizabeth against forty-eight of the Jewish nation, and thirty-seven of them were arrested "as they were following their occasions on the Royal Exchange to the great prejudice of their reputation both here and abroad." By the Statute of Elizabeth, an Act expressly directed against the Papists and passed at a time when there were no recognized Jews in England, all persons above the age of sixteen years

[1] 1 Hag., *Con.*, Appendix, p. 2.

"which shall not repair to some church, chapel, or usual place of common prayer" were to forfeit a penalty of £20 a month, and in addition be bound with two sureties until they should conform themselves and come to church. As an indictment for riot could no longer be laid, the upholders of intolerance availed themselves of this old statute, even in those days obsolete, which was not formally repealed till 1844 (7 & 8 Vict. c. 102). However, a petition was presented by Joseph Henriques, Abraham Delivera (one of the petitioners in 1673), and Aaron Pacheco, overseers of the Jewish synagogue, on behalf of the Jewish nation, praying His Majesty to permit and suffer them as heretofore to have the benefit of the free exercise of their religion during their good behaviour towards His Majesty's Government. It was accordingly on Nov. 13 ordered by the King in Council "that His Majesty's Attorney General do stop all the proceedings at law against the Petitioners: His Majesty's intention being that they should not be troubled upon this account, but quietly enjoy the free exercise of their religion, whilst they behave themselves dutifully and obediently to his government[1]."

From this time forth there is no record in the law reports of any attempt to interfere with the free exercise of the Jewish religion. This is not a little surprising in an intolerant age, when the many statutes directed against Papists and Protestant Nonconformists were equally applicable to Jews and might have been rigidly enforced against them. It must not, however, be supposed that there were no Anti-Semites in those days; indeed in the year 1702 they succeeded in passing through Parliament an Act—entitled An Act to oblige Jews to maintain and provide for their Protestant children—the avowed purpose of which was to assist the conversion of the Jews to the religion of the land. The Act (1 Anne, st. 1, c. 30) provides that "to the end that sufficient maintenance be provided and allowed for the children of Jewish parents who shall turn

[1] 1 Hag., *Con.*, Appendix, p. 3.

Protestants be it enacted . . . that 'if any Jewish parent, in order to the compelling of his or her Protestant child to change his or her religion shall refuse to allow such child a fitting maintenance suitable to the degree and ability of such parent and to the age and education of such child, then . . . it shall be lawful for the Lord Chancellor, Lord Keeper or Commissioners (for the great seal for the time being) to make such order therein for the maintenance of such Protestant child, as he or they shall think fit.'" It may be mentioned that there were similar and even more stringent provisions in favour of the Protestant children of "Popish Parents" inserted in the Act to prevent the further growth of Popery (2 Anne, c. 1) passed in the following year.

Although not repealed until quite recent times, the statute had become quite obsolete; yet in the early days of its existence vigorous attempts had been made to enforce it, and there had even been a disposition on the part of zealous Chancellors to give the words of the enactment the most extensive interpretation. An example of this tendency is the case of *Vincent* v. *Fernandez*, which was decided in 1718 by Lord Chancellor Parker, afterwards created Earl of Macclesfield. In that case a Jew had a daughter who turned Protestant. The Jew had a very considerable personal estate, and dying in May, 1717, after having by his will left several charities and given his personal estate from his daughter to his executor, the daughter, who was married and forty-four years old, petitioned the Lord Chancellor for a maintenance under this statute. It was objected that this case was not within the Act, for that, first, the child is above forty years old, and so the care of her education over; secondly, she is married and not now to be called a child, but to be provided for by her husband; thirdly, that the parent being dead could not be said to have refused to allow her fitting maintenance, &c., and so the power given by the Act is at an end. In answer to these objections, the

Lord Chancellor said: "I strongly incline to think this case within the Act upon the following reasons; the petitioner is a Protestant child of a Jewish parent, though the parent be dead. Suppose the child of a Jew turns Protestant, and the Jew, the parent, by will gives his estate to trustees, upon a secret trust, that if the child turn Jew the child shall have the estate, and not otherwise. As this would be clearly within the mischief, so every one must wish it to be within the meaning of the Act. It is not said the complaint shall be against the father; that would indeed take this case out of the Act; neither is it said that the order should be made upon or against the father, so that this case fits every word made use of by the legislature. Suppose a suit or petition had been exhibited, and the Jew, the parent, had died pending the petition, and had given all away from his Protestant child because the child had turned Protestant, doubtless the complaint might be against the executor, and the order likewise against the executor; every one will allow this to be a hard case, and if the words be large enough (as they are), why should they not be construed to extend to it?

"Then as to the refusal of the parent, it is not to be intended that the parent, the Jew, must make an actual refusal in words, for by that construction the statute might easily be evaded and rendered useless. If the Jewish father do by will dispose of all his estate from his child, this is in law a refusal; and unless some other reason be made appear, it shall be intended, because the child was a Protestant. The obligations of nature plead so strongly on behalf of a child, that when such a case happens, some great provocation must be supposed to have occasioned it; and if no other reason be made appear, this difference in religion shall be intended the reason.

"Possibly these charities given by the Jew's will may be under some secret trust for the child if she should turn Jew, wherefore let all this be inquired into by the Master[1]."

[1] 1 Peere Williams, pp. 524, 525.

The learned reporter, however, adds a note to the effect that the Court did not appear to have made any order on the petition, and that probably the parties came to some agreement.

The effect of the statute and the method of enforcing it in the earlier part of the eighteenth century may best be gathered from the report of the proceedings in the case of one Marcus Moses given in Sanders' *Orders in Chancery*, of which I append an abridgment:—On the 22nd of January, 1723, Moses Marcus preferred a petition setting forth that he is the eldest son of Marcus Moses of London, merchant, who is by profession of religion a Jew, and as such educated his son in the best manner that he could in the mystery of that religion, and in all other respects as a gentleman and a scholar, both at home and in travels in foreign parts, for improvement suitable to the degree and ability of the petitioner's father, who has a plentiful estate, and lives in great repute and esteem in the City of London. That the said petitioner is now of the age of twenty-two years and upwards, and being by such education become capable of judging of the true religion, and having diligently searched the Scriptures and inquired into the Christian religion as well as the Jewish, and being fully convinced of the truth of the one and of the errors of the other, hath from a full conviction and from a lively faith in God's mercies through Jesus Christ our Saviour, without any worldly views, but on the contrary well knowing that he should thereby become the hatred and scorn of his parents and relations who are all Jews and with whom he was before in great esteem, and be cast off from his parents notwithstanding all those discouragements, embraced the Christian religion, the only true one, and hath been baptized therein, and is become a Protestant of the Church of England as by law established. That by means of the petitioner's conversion to the Christian faith and becoming a Protestant (as he before well knew he should), he finds himself hated and scorned by his parents and cast off by

his said father; and in order to compel him to exchange his religion is by his father refused to be allowed a fitting maintenance suitable to the degree and ability of his said father and to the petitioner's age and education, whereby the petitioner, who was educated as a gentleman and a scholar, and with the dependence of a plentiful fortune from his said father, is now become destitute and without any subsistence, and not being educated in the way of business otherwise than as a gentleman and a scholar, &c., is not at present capable of getting his living, &c., &c., wherefore it was prayed that directions should be given touching an allowance for the petitioner's maintenance. Whereupon an inquiry was ordered into the circumstances of Marcus Moses, the number of his family and the amount of his estate and the education of the petitioner, and the father Marcus Moses was ordered to give £5,000 security to pay such allowance to the petitioner from time to time as the Lord Chancellor should think fit. "And it being alleged that the said petitioner hath had only five guineas from his father since his baptism, so that he hath occasion for money for his present subsistence, and that part of his clothes and wearing apparel are detained from the petitioner by his father, it is thereupon further ordered that the said Marcus Moses the petitioner's father do pay him £50 on Tuesday next and deliver him his clothes at the same time."

The inquiries appear to have been duly held, and as a result of them the father, Marcus Moses, was ordered to pay his son £60 per annum by quarterly payments, yet in the year 1726 the son presented another petition alleging that the maintenance had not been paid in pursuance of the Order of the Court; the father preferred a counter-petition setting forth that even before the making of the said Order his son Marcus Moses returned to the Jewish worship and professed himself to be a Jew, and kept the Passover with Jews, and as soon as the same was over voluntarily went over to Holland and there renounced the

Christian religion, and went publicly to the Synagogue and did penance for his having turned Christian in England, and continued in Holland a year and five months and behaved as a Jew all that time, during which time he by several letters applied to his said father to maintain and provide for him as a Jew, which he did, and paid several large sums for him more than his maintenance came to. And the said Marcus Moses being come over again to England has professed himself a Jew and behaved as such according to their ceremonies, and still continued so to do, whereby he hath forfeited the maintenance allowed him as aforesaid, and therefore praying that the said Order might be discharged. Upon these petitions all the parties were ordered to attend the Lord Chancellor (Lord King), who after hearing the evidence, including a declaration by the son in Court that he was a Christian, ordered that the sum formerly allowed for maintenance be continued until the 10th of February instant, and as to any demand of the money since the 10th of February the Bishop of London was to examine whether the said Marcus Moses be a Christian [1].

It may be seen from the record of this case that the allowances given by the Chancellors were not excessive, and that maintenance was only given in case the child claiming it was unable to maintain itself, and would not be continued unless the conversion was genuine, the question, if there were any doubt about it, being referred to the bishop of the diocese. In any case the statute was not instrumental in procuring numerous conversions; and though well known to the judges, and acted upon on occasion, there was a growing tendency on the part of the Chancellors to restrict its operation, as may be seen from Lord Hardwicke's judgment in the well-known case of *Villareul* v. *Mellish*, decided in 1737 [2]. It gradually became obsolete, and was

[1] Sanders, *Orders in Chancery*, vol. I, pp. 457 seq., 524 seq.

[2] 2 Swanston, pp. 533, 539; and 2 Atk., p. 14, under name of *Mellish* v. *Da Costa*.

finally repealed in the year 1846 by the Act to relieve Her Majesty's Subjects from certain penalties and disabilities in regard to Religious Opinions (9 & 10 Vict. c. 59).

Since the petition already referred to, which was presented in 1685, there is no trace in the law reports of the statutes directed against Nonconformists, some of the most stringent of which, e.g. the Act of Uniformity (1662, 14 Car. II. c. 4) and the Conventicle Act (1670, 22 Car. II. c. 1), were only passed after the restoration of the Stuart dynasty, being enforced against the Jews. In the case of Protestant Dissenters the severity of these statutes was in a great measure mitigated by the Toleration Act (1688, 1 Will. & Mary, c. 18), which is expressed to be enacted "Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties' *Protestant* subjects in interest and affection." The Jews, though in no way protected by this Act, remained undisturbed in the exercise of their religion; and those who were hostile to them had therefore to resort to tactics which have frequently been used as instruments of persecution, and which were immediately suppressed by the courts of law, to the great credit of English justice. In the year 1732 a paper was published by one Osborne containing an account of a murder committed the latter end of February on a Jewish woman and her child by certain Jews lately arrived from Portugal and living near Broad Street, because the child was begotten by a Christian, and showing that the like cruelty had often been committed by the Jews. In consequence of this publication, several Jews recently arrived from Portugal and living in Broad Street were attacked by multitudes in several parts of the city, barbarously treated, and threatened with death in case they were found abroad any more. Accordingly in Easter term the Court of King's Bench was moved for a rule calling upon the said Osborne to show cause why a criminal information for libel should not issue against him for publishing the paper above referred to. Upon the motion, Lord Raymond,

the Lord Chief Justice, said that he believed the Court could do nothing in this matter by reason that no particular Jews could be able to show to the Court that they were pointed at more than any others, and thought that Lord Chief Justice Holt was of this opinion in the case of Orme and Nut. In that case (which is reported in 1 Lord Raymond, p. 486) an indictment was exhibited for a libel called "The list of adventurers in the Ladies invention, being a lottery," &c., and alleged to be to the scandal of divers good subjects of the King to the jurors unknown. The jury found the accused guilty, but upon motion judgment was arrested on the ground that the persons libelled were unknown, and that it could not be said that any definite person was defamed. The Court, however, made a rule against Osborne to show cause. In Trinity term cause was shown, and the Court made the rule absolute. They distinguished the case from Orme's case, saying, "that in the present case it is related in the paper that the fact there told is a fact which the Jews have frequently done; and therefore the whole community of the Jews are struck at," and further adding that "admitting an information for a libel may be improper, yet the publication of this paper is deservedly punishable in an information for a misdemeanour (apparently inciting to a breach of the peace), and that of the highest kind; such sorts of advertisements necessarily tending to raise tumults and disorders among the people and inflame them with an universal spirit of barbarity against a whole body of men, as if guilty of crimes scarce practicable and totally incredible[1]." This is undoubtedly a strong case, and one which, it is to be hoped, will be acted upon in case any similar attack should be made upon the Jews; but it is only right to point out that a libel on the Jewish religion would not be so dealt with unless it was such as to tend to stir up the hatred of the Queen's subjects against persons professing that

[1] See 2 Barnardiston, pp. 138, 166; Wm. Kelynge, p. 231; 2 Swanston, p. 503 (note), and Sess. Cas., p. 260.

religion, and so conduce to a breach of the peace. For later cases tend to show that, assuming that the decencies of controversy are observed, the fundamental doctrines of any religion, not excluding that of the Established Church, may be attacked with impunity. There are no doubt competent authorities who hold, on the strength of certain old cases, that any attack upon Christianity, being part of the law of the land, is punishable. But there will always be great difficulty in inducing a jury to convict. Indeed, in the year 1883, when Mr. Bradlaugh was tried for publishing a periodical called the *Freethinker*, which was advertised as being an Anti-Christian organ and as waging relentless warfare against superstition in general and against the superstition of Christianity in particular, it was laid down by the Chief Justice, Lord Coleridge, in addressing the jury, that publications discussing with gravity and decency, and in an argumentative way, questions as to Christian doctrine or statements in the Hebrew Scriptures, and even questioning their truth, are not to be deemed blasphemous so as to be fit subjects for criminal prosecution; but that publications which in an indecent and malicious spirit assail and asperse the truth of Christianity or of the Scriptures, in language calculated and intended to shock the feelings and outrage the belief of mankind, are properly to be regarded as blasphemous libels. In the subsequent case of the *Queen* v. *Ramsey* and *Foote*, arising out of the publication of the same periodical, Lord Coleridge, in dealing with this point, said: "Now according to the old law, or the dicta of the judges in old times, these would undoubtedly be blasphemous libels, because they asperse the truth of Christianity. But, as I said in the former trial, and now repeat, I think that these old cases can no longer be taken to be a statement of the law at the present day. It is no longer true in the sense in which it was true when these dicta were uttered—that 'Christianity is part of the law of the land.' Non-conformists and Jews were then under penal laws, and

were hardly allowed civil rights. But now, so far as I know the law, a Jew might be Lord Chancellor [1]. Certainly he might be Master of the Rolls; and the great Judge whose loss we have all had to deplore [2] might have had to try such a case; and if the view of the law supposed be correct, he would have had to tell the jury, perhaps partly composed of Jews, that it was blasphemy to deny that Jesus Christ was the Messiah, which he himself did deny, and which Parliament had allowed him to deny, and which it was part of 'the law of the land' that he might deny. Therefore to asperse the truth of Christianity cannot *per se* be sufficient to sustain a criminal prosecution for blasphemy. . . . Therefore to maintain that merely because the truth of Christianity is denied without more, that therefore a person may be indicted for blasphemous libel, is, I venture to think, absolutely untrue [3]."

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[1] A question which will be considered later.
[2] Sir George Jessel, who died on March 21, 1883.
[3] 15 Cox, C. C., p. 235.

(To be continued.)